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S. 415

[Report No. 107-]

To amend title 49, United States Code, to require that air carriers meet public convenience and necessity requirements by ensuring competitive access by commercial air carriers to major cities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 28, 2001

Mr. HOLLINGS (for himself, Mr. MCCAIN, Mr. Dorgan, and Mr. GRASSLEY) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

MARCH —, 2001

Reported by Mr. MCCAIN, with an amendment in the nature of a substitute

[Strike all after the enacting clause and insert the part printed in italic]

A BILL

To amend title 49, United States Code, to require that air carriers meet public convenience and necessity requirements by ensuring competitive access by commercial air carriers to major cities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

[Original bill text struck. Not printed here.]

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Aviation Competition*
3 *Restoration Act”.*

4 **SEC. 2. FINDINGS.**

5 *The Congress makes the following findings:*

6 (1) *The airline industry continues to evolve into*
7 *a system dominated by a few large air carriers and*
8 *a handful of smaller, niche air carriers. Absent Con-*
9 *gressional action, access to critical markets is likely*
10 *to be foreclosed.*

11 (2) *In testimony before the Commerce Committee*
12 *in 1978, the then-President of Eastern Airlines testi-*
13 *fied that the top 5 air carriers had 68.6 percent of*
14 *the domestic market. If the mergers and acquisitions*
15 *proposed in 2000 and 2001 are consummated, the 5*
16 *largest network airlines in the United States will ac-*
17 *count for approximately 83 percent of the air trans-*
18 *portation business (based on revenue passenger miles*
19 *flown in 1999).*

20 (3) *According to Department of Transportation*
21 *statistics, taking into account the proposed mergers of*
22 *United Airlines and US Airways, and of American*
23 *Airlines and TWA, there will be at least 20 large hub*
24 *airports in the United States where a single airline*

1 *and its affiliate air carriers would carry more than*
2 *50 percent of the passenger traffic.*

3 *(4) The continued consolidation of the airline in-*
4 *dustry may inure to the detriment of public conven-*
5 *ience and need, and the further concentration of mar-*
6 *ket power in the hands of even fewer large competitors*
7 *may lead to unfair methods of competition.*

8 *(5) A more concentrated airline industry would*
9 *be likely to result in less competition and higher fares,*
10 *giving consumers fewer choices and decreased cus-*
11 *tomer service.*

12 *(6) The Department of Transportation has docu-*
13 *mented that air fares are relatively higher at those*
14 *main hub airports where a single airline carries more*
15 *than 50 percent of the passenger traffic, and studies*
16 *indicate that unfair methods of competition are more*
17 *likely to occur at such airports, thus inhibiting com-*
18 *petitive responses from other carriers when fares are*
19 *raised or capacity reduced.*

20 *(7) The General Accounting Office has conducted*
21 *a number of studies that document the presence of*
22 *both high fares and problems with competition in the*
23 *airline industry at dominated hub airports.*

24 *(8) The National Research Council of the Trans-*
25 *portation Research Board has recognized that higher*

1 *fares exist in short haul markets connected to con-*
2 *centrated hub airports.*

3 *(9) A Department of Transportation study indi-*
4 *cates that the entry and existence of low fare airline*
5 *competitors in the marketplace has resulted in a re-*
6 *ported \$6.3 billion in annual savings to airline pas-*
7 *sengers.*

8 *(10) While the antitrust rules generally govern*
9 *mergers and acquisitions in the air carrier industry,*
10 *and will continue to do so, the public concern about*
11 *the importance of air transportation, the impact of*
12 *over scheduling, increasing flight delays and cancella-*
13 *tions, poor service, and continued hub domination re-*
14 *quires the Department of Transportation to assert its*
15 *authority in analyzing proposed transactions among*
16 *air carriers that affect consumers.*

17 **SEC. 3. COMPETITIVE ACCESS TO GATES, FACILITIES, AND**
18 **OTHER ASSETS.**

19 *(a) IN GENERAL.—Subchapter I of chapter 417 is*
20 *amended by adding at the end thereof the following:*

21 **“§ 41722. Competitive access to gates, facilities, and**
22 **other assets**

23 **“(a) DOT REVIEW OF GATES, FACILITIES, AND AS-**
24 **SETS.—***Within 90 days after the date of the enactment of*
25 *Aviation Competition Restoration Act, the Secretary of*

1 *Transportation shall investigate the assignment and usage*
2 *of gates, facilities, and other assets by major air carriers*
3 *and their affiliated carriers (other than commuter air car-*
4 *riers) at the largest 35 airports in the United States in*
5 *terms of passenger enplanements. The investigation shall*
6 *include an assessment of—*

7 “(1) *whether, and to what extent, gates, facili-*
8 *ties, and other assets are being fully utilized by major*
9 *air carriers and their affiliated carriers at those air-*
10 *ports;*

11 “(2) *whether gates, facilities, and other assets are*
12 *available for competitive access to enhance competi-*
13 *tion; and*

14 “(3) *whether the reassignment of gates, facilities,*
15 *and other assets to, or other means of increasing ac-*
16 *cess to gates, facilities, and other assets for, air car-*
17 *riers (other than dominant air carriers) would im-*
18 *prove competition among air carriers at any such*
19 *airport or provide other benefits to the flying public*
20 *without compromising safety or creating scheduling,*
21 *efficiency, or other problems at airports providing*
22 *service to or from those airports.*

23 “(b) *AUTHORITY OF SECRETARY TO MAKE GATES,*
24 *ETC., AVAILABLE.—*

1 “(1) *IN GENERAL.*—*The Secretary shall require a*
2 *major air carrier and its affiliated carrier, upon ap-*
3 *plication by another air carrier or on the Secretary’s*
4 *own motion, to relinquish gates, facilities, and other*
5 *assets available so that those facilities may be leased*
6 *by the airport sponsor, or, in the case of slots, be re-*
7 *allocated by the Secretary, to other air carriers on*
8 *terms that are fair, reasonable, and nondiscrim-*
9 *inatory to ensure competitive access to those airports*
10 *if the Secretary determines, on the basis of the inves-*
11 *tigation conducted under subsection (a), that such*
12 *gates, facilities, and other assets are not available, or*
13 *are underutilized, and that competition would be en-*
14 *hanced thereby at those airports.*

15 “(2) *PROTECTION OF SMALL COMMUNITIES.*—
16 *Paragraph (1) does not apply to any gate, facility, or*
17 *asset exclusively used by a commuter air carrier.*

18 “(c) *DEFINITIONS.*—

19 “(1) *MAJOR AIR CARRIER.*—*In this section the*
20 *term ‘major air carrier’ means an air carrier certifi-*
21 *cated under section 41102 that accounted for at least*
22 *1 percent of domestic scheduled-passenger revenues in*
23 *the 12 months ending March 31 of each year, as re-*
24 *ported to the Department of Transportation pursuant*
25 *to part 241 of title 14, Code of Federal Regulations,*

1 *and identified as a reporting carrier periodically in*
2 *accounting and reporting directives issued by the Of-*
3 *fice of Airline Information.*

4 “(2) *DOMINANT AIR CARRIER.*—*The term ‘domi-*
5 *nant air carrier’ means an air carrier that accounts*
6 *for more than 50 percent of the enplaned passengers*
7 *at an airport.*

8 “(3) *COMMUTER AIR CARRIER.*—*The term ‘com-*
9 *muter air carrier’ has the meaning given it by section*
10 *41714(h)(1).*

11 “(4) *ASSET.*—*The term ‘asset’ includes slots (as*
12 *defined in section 41714(h)(4)) and slot exemptions*
13 *(within the meaning of section 41714(a)(2)).*

14 “(5) *AFFILIATED CARRIER.*—*The term ‘affiliated*
15 *carrier’ has the meaning given it by section*
16 *41714(k).’.*

17 “(6) *PASSENGER ENPLANEMENTS.*—*The term*
18 *‘passenger enplanements’ means the annual number*
19 *of passenger enplanements, as determined by the Sec-*
20 *retary of Transportation, based on the most recent*
21 *data available.*

22 (b) *CONFORMING AMENDMENT.*—*The chapter analysis*
23 *for chapter 417 of title 49, United States Code, is amended*
24 *by inserting after the item relating to section 41721 the fol-*
25 *lowing:*

“41722. Competitive access to gates, facilities, and other assets”.

1 **SEC. 4. UNFAIR METHODS OF COMPETITION IN AIR TRANS-**
2 **PORTATION.**

3 *(a) UNFAIR COMPETITION THROUGH USE OF GATES,*
4 *FACILITIES, AND OTHER ASSETS.—Section 41712 of title*
5 *49, United States Code, is amended by adding at the end*
6 *the following:*

7 *“(c) UNDERUTILIZATION OF GATES, FACILITIES, OR*
8 *OTHER ASSETS.—*

9 *“(1) IN GENERAL.—It is an unfair method of*
10 *competition in air transportation under subsection*
11 *(a) for a dominant air carrier at a dominated hub*
12 *airport—*

13 *“(A) to fail to utilize gates, facilities, and*
14 *other assets fully at that airport; and*

15 *“(B) to refuse, deny, or fail to provide a*
16 *gate, facility, or other asset at such an airport*
17 *that is underutilized by it, or that will not be*
18 *fully utilized by it within 1 year, to another car-*
19 *rier on fair, reasonable, and nondiscriminatory*
20 *terms upon request of the airport, the other air*
21 *carrier, or the Secretary.*

22 *“(2) REQUESTING CARRIER MUST FILE WITH*
23 *DOT.—An air carrier making a request for a gate, fa-*
24 *cility, or other asset under paragraph (1) shall file a*
25 *copy of the request with the Secretary when it is sub-*
26 *mitted to the dominant air carrier.*

1 “(3) *AVAILABILITY OF GATES AND OTHER ESSEN-*
2 *TIAL SERVICES.*—*The Secretary shall ensure that*
3 *gates and other facilities are made available on terms*
4 *that are fair and reasonable to air carriers at covered*
5 *airports where a ‘majority-in-interest clause’ of a con-*
6 *tract or other agreement or arrangement inhibits the*
7 *ability of the local airport authority to provide or*
8 *build new gates or other essential facilities.*

9 “(4) *DEFINITIONS.*—*In this subsection:*

10 “(A) *DOMINANT AIR CARRIER.*—*The term*
11 *‘dominant air carrier’ has the meaning given*
12 *that term by section 41722(c)(2).*

13 “(B) *DOMINATED HUB AIRPORT.*—*The term*
14 *‘dominated hub airport’ means an airport—*

15 “(i) *that each year has at least .25 per-*
16 *cent of the total annual boardings in the*
17 *United States; and*

18 “(ii) *at which 1 air carrier accounts*
19 *for more than 50 percent of the enplaned*
20 *passengers.*

21 “(C) *COVERED AIRPORT.*—*The term ‘cov-*
22 *ered airport’ has the meaning given that term by*
23 *section 47106(f)(3).*

24 “(D) *ASSET.*—*The term ‘asset’ includes*
25 *slots (as defined in section 41714(h)(4)) and slot*

1 *exemptions (within the meaning of section*
2 *41714(a)(2)).”.*

3 **(b) CONFORMING AMENDMENT.**—*Section 155 of the*
4 *Wendell H. Ford Aviation Investment and Reform Act of*
5 *the 21st Century (49 U.S.C. 47101 nt) is amended by strik-*
6 *ing subsection (d).*

7 **SEC. 5. AIP COMPETITION FUNDING.**

8 **(a) IN GENERAL.**—*Subchapter I of chapter 471 of title*
9 *49, United States Code, is amended by adding at the end*
10 *the following:*

11 **“§ 47138. Competition enhancement program**

12 **“(a) IN GENERAL.**—*Notwithstanding any provision of*
13 *this title to the contrary, the Secretary of Transportation*
14 *may make project grants under this subchapter from the*
15 *Airport and Airway Trust Fund for gates, related facilities,*
16 *and other assets to enhance and increase competition among*
17 *air carriers for passenger air transportation, selected by the*
18 *Secretary on a case-by-case basis, at airports described in*
19 *section 41723(a). In carrying out this subsection, the Sec-*
20 *retary shall give priority to gates that will enhance service*
21 *to small and medium-sized communities.*

22 **“(b) SECRETARY MAY INCUR OBLIGATIONS.**—*The Sec-*
23 *retary may incur obligations to make grants under this sec-*
24 *tion.*

25 **“(c) CONSISTENCY OF REQUIREMENTS.**—

1 “(1) *IN GENERAL.*—*The Secretary shall make*
2 *gates eligible for project funding under chapter 471 at*
3 *any airport described in section 41723(a) where the*
4 *Secretary determines that such funding is necessary*
5 *to ensure competitive access at that airport.*

6 “(2) *PARITY BETWEEN AIP-FINANCED AND PFC-*
7 *FINANCED GATES.*—*The Secretary shall by regulation*
8 *require that projects related to gates described in*
9 *paragraph (1) are subject, to the extent appropriate,*
10 *to the requirements set forth in Appendix A to part*
11 *158 of title 14 of the Code of Federal Regulations*
12 *for—*

13 “(A) *non-exclusivity of contractual agree-*
14 *ments;*

15 “(B) *carryover provisions; and*

16 “(C) *competitive access.*

17 “(d) *AUTHORIZATION OF APPROPRIATIONS.*—*There*
18 *are authorized to be appropriated from the Airport and*
19 *Airway Trust Fund \$300,000,000 for fiscal year 2002, such*
20 *amount to remain available until expended.”.*

21 “(b) *CONFORMING AMENDMENT.*—*The chapter analysis*
22 *for subchapter I of chapter 471 of such title is amended*
23 *by inserting after the item relating to section 47137 the fol-*
24 *lowing:*

“47138. *Competition enhancement program*”.

